IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MARYLAND

MARY E. EDMONDSON, et al.,
Plaintiffs,
vs.
EAGLE NATIONAL BANK, et al.,
Defendants.

CIVIL NO.: 1:16-0398-SAG

May 15, 2020
Transcript of Proceedings
Teleconference

BEFORE: The Honorable STEPHANIE A. GALLAGHER, Judge

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P R O C E E D I N G S

THE COURT: Good morning, everyone. This is Judge Gallagher and I understand we have everyone on the line.

We are here today in the case of Mary Edmondson versus Eagle National Bank, case number SAG-16-3938. Let me ask at the outset if everyone could put their phones on mute if you're not actively participating. I think that would limit the amount of feedback we're hearing. Okay, thank you.

Now if I could have the lawyer for the parties introduce themselves, starting with the Plaintiffs and tell us who is on the line for your side.

MR. SMITH: Your Honor, it's Michael Smith and Tim Maloney and Melissa English, on behalf of the Plaintiffs.

THE COURT: All right, and who do we have for the Defendants?

MR. BECKER: Good morning, Your Honor. Ryan Becker, with Brian Moffet and Michael Brown for all of the Defendants.

THE COURT: Thank you. And I once again would ask that people put their phones on mute. I am hearing a little bit of feedback from somebody's phone.

Okay, for the hearing today, we will proceed by having argument from the Plaintiffs, then from the Defendants, and then again from the Plaintiffs in rebuttal. What I am going to do is to reserve my questions until Counsel has finished speaking to avoid people from interrupting one

another during a phone hearing. So I will allow Counsel to finish their presentation and will reserve my questions for the end. So why don't we start from hearing from Plaintiffs' counsel.

MR. SMITH: Yes, Your Honor. Michael Smith. I'll start for the Plaintiffs and then Tim Maloney will add on his topics.

By way of background, Genuine Title was owned by Jay Zukerberg. He started the company in approximately 2005 and at the beginning he had come from another title company, Heavyweight Title and he started Genuine Title and he started paying kickbacks as part of his business plan in order to generate business.

By 2008, Jay Zukerberg admits that more than 50 percent of Genuine Title's business is supported by kickbacks. He identifies two types of targets for business, big banks and at big banks he targets loan officers specifically and at regional and smaller banks he targets branch managers, because they're the ones who control where the title services went.

Eagle is a regional bank and mortgage company during the time that's at issue. From 2007 to 2012 Genuine Title paid kickbacks to Eagle through its branch managers.

There are two main people at Genuine Title who generate business. It's Jay Zukerberg and Brandon Glickstein.

Jay throughout his time at Genuine Title and he's the owner of Genuine Title, was a money guy. And by "money guy" I mean he paid cash or checks to the branch managers and/or loan officers in order to get the business. Brandon Glickstein starts out as a money guy at Genuine Title, but then switches approximately in 2009 or 2010 he switches to doing marketing. And what he would do is have Genuine Title pay the brokers' bills for marketing via what he calls credits. But what he would do is instead of paying somebody $200 per referral, he would get Genuine Title to pay $200 to Competitive Advantage Marketing for marketing materials that he was supplying to the referred. So in those cases they would be characterized in our complaint as marketing credits, but what it was was it was cash that was paid by Genuine Title to CAM to pay the bills of the branch managers or the loan officers as the case may be.

During the time period that is the subject of this case, kickbacks Jay Zukerberg testifies both at the Maryland Insurance Administration and in a related case, Emery, that kickbacks is a problem within the Maryland market and Jay Zukerberg says this is what he had to do to compete. He would have preferred to compete by lowering prices, but kickbacks are what it took with companies he was dealing with. He testified explicitly what he means by that is he would have been happy to pass on these kickbacks onto the borrowers as savings, but the branch managers at Eagle and other places

wanted the money for themselves.

During the period of time identified in the Class, we have identified 3,472 loans through the information we have obtained from the Genuine Title settlement database. We exported that to an Excel spreadsheet and we have been able to identify these loans because these loans have settlement dates in the database which based on our past experience makes them likely to have closed.

With respect to these loans, one thing that is telling is that a whopping 68 percent of these loans come from Gary Klopp's branch at Eagle. We know this because the referring branches appealed in the Genuine Title database.

Jay Zukerberg tells us via affidavit that he started paying Gary Klopp in 2005 or 2006 between $300 and $400 per loan. We have identified and had Mr. Zukerberg authenticate $340,000 in checks to Gary Klopp during the applicable period. Since then we've identified an additional $119,000 in checks.

With respect to other branches, 8 percent of the loans, 8 percent of those 3,472 loans comes from Adam Mandelberg's branch. Adam Mandelberg has testified -- he has been deposed. Mr. Mandelberg took the Fifth when being asked about taking kickbacks while at Eagle. We know from Jay, however, that Genuine Title was paying kickbacks throughout Adam's time at Eagle at a minimum of $300 per referral. How it would work would be -- Jay Zukerberg has described how it

works on a monthly basis. He would run the totals at the end of each month or since the last payment, but it was generally monthly. He would cut the check the following month to the LLC that had been set up to run the kickbacks through.

Some of the players -- other players, Jim Kniest who was a branch manager at Eagle, got money in the beginning and then marketing credits through Brandon Glickstein. And Brandon has testified to that in that the fact that kickbacks were paid throughout Jim Kniest's time at Eagle on all of Jim Kniest loans referred.

Klimchak was another branch that Brandon managed and he also has testified that his branch received kickbacks for each referral throughout his time at Eagle. Jay Zukerberg testifies and tells us that the branch managers set up the LLCs to receive the kickbacks because they, quote, "did not want it to look fishy." End quote. In fact, the names of the LLCs that were chosen were either related to, quote, "consulting companies or something that sounded like a normal vendor for a title company." In Mr. Klopp's case, he had three LLCs that he ran through kickbacks from Genuine Title. They are Carroll Abstracts, All County Settlements and Columbian Network Associates. Mr. Klopp was getting so much money that he needed three LLCs to funnel this money through and then he used -- he didn't use marketing materials, he used this money to purchase live leads to generate business for

Eagle National and Eagle Nationwide. It is on this factual backdrop that we move for Class certification. All individuals in the U.S. with regards on federally-related mortgage as defined under RESPA from brokers who were originated by Eagle Bank or Eagle Nationwide Mortgage for which Genuine Title provided a settlement service as identified in Section 1100 on the HUD-1 between January 1, 2007, and December 31, 2011. Exempted from this class is any person who during the period of January 1, 2007, to December 31, 2011, was an employee, officer, member and/or agent of the Defendants, Eagle National Bank, Eagle Nationwide Mortgage, ESSA Bank and Trust, Genuine Title LLC, Brandon Glickstein, Inc., and/or Competitive Advantage Media Group, LLC.

With respect to ascertainability, the Rule 23 factors ascertainability has been identified as an additional consideration. We have the Genuine Title database with the addresses, telephone numbers, et cetera. The database tells us what loans had settlement dates. Eagle also has loan files including HUD-1s to identify this class.

With respect to numerosity, Your Honor, there are 3,472 loans with settlement dates. This Circuit has approved cases with as little as 40 members. Numerosity is satisfied.

With respect to commonality, and commonality does not require all or even most issues to be common, but here,

we're talking about Mary Edmondson or frankly, Barry or Harriet homeowner, the questions and the evidence are going to be the same.

Jay Zukerberg will testify, did you pay a kickback for every loan referred or sent by these Eagle branches, Klopp, Mandelberg, et cetera? And the answer will be yes. How much did you pay for each loan between X and Y? And it will vary based upon the branch that's being discussed. How often would you pay for loans? And he will testify, I would tally up the settlements since the last kickback, normally monthly, and cut them a check for the agreed-upon amount.

With respect to fraudulent concealment, these issues are common as well. When the CFPB and the Maryland Insurance Administration were closing in on you, Mr. Zukerberg, did you create and backdate sham title services agreement to try and conceal the kickbacks from regulators? The answer will be a candid yes. Didn't Mr. Klopp and Mr. Mandelberg sign these backdated title services agreement? And this is 76 percent of the loans that Eagle has. The answer will be yes. These folks did. Did these Eagle folks form LLCs to receive kickbacks to conceal the kickbacks so that it would not look fishy? His answer will be yes. Did you pay those LLCs for the referrals? Yes. Did you and Eagle choose not to put the referral fees on the HUD-1s? Yes. Is that every HUD-1? Yes. Were the kickbacks disclosed in the good faith estimate? His

answer will be no. And is that true for all of the loans referred by Eagle? Yes. Were barters ever told of the referral fees? He will say that they were not, and so on and so on. All the things that we have alleged for concealment will be testified to on a Class-wide basis.

The same basic questions will be asked of Brandon Glickstein, Gary Klopp and if Mr. Mandelberg doesn't take the Fifth, Mr. Mandelberg and others. The evidence will come in on a class-wide basis because, Judge, frankly that is how the witnesses actually remember it. Unlike other cases, Jay Zukerberg does not remember Mary Edmondson or Chemene Clark's settlement or Harry or Harriet Homeowner, a member of the punitive class. What he does remember was they did the same thing time and time again and it happened throughout the time that these folks were at Eagle.

When you're getting 3,500 to 4,000 loans from one institution and 68 percent from one person's branch, you remember what that deal was. And you remember that it occurred all the time.

As for damages, this is common as well. It is the same formula for each set of borrowers. The only thing that would change is the amount based on what they've paid. This has never been an issue -- calculating damages has never been an issue in the tens of thousands of borrowers that have been helped throughout these RESPA actions that we have had.

With respect to typicality, claims arise or defense arise from the same conduct and whether the same legal theory underlies the claim or defenses. Here, they're all RESPA claims. They're all for kickbacks. They're out of each settlement and they all involve fraudulent concealment and specifically the testimony will be in bulk. It will not be specific as to a specific person because that's not how the witnesses remember it. They remember it from they did the same thing every time, all the time and the facts are Class wide.

We'll talk about it more later, but the defense all involves the jury's consideration of the same evidence that is applicable to all the claims on the issue of fraudulent concealment. Uniformity in the way that it was concealed is what the testimony will be. The defense's proof of what was available out there in the universe. The arguments that they made before the Fourth Circuit. They all apply -- those arguments apply to the reasonable residential borrower test as set out in *Edmondson*. And this uniformity in the way that they concealed, uniformity in what was available in the universe can all be weighed by the jury to determine whether diligence required the reasonable residential borrower to find such evidence. And what that evidence would mean, even if they found it.

It is an objective standard for the jury to

determine, does due diligence require a reasonable residential borrower to search info that the defense relies on at or about the time that it is available to be found. In this case, that evidence will be that -- the evidence that they point to isn't even available on the internet until between five and eight years, depending upon when you settle in our class after your settlement.

Your Honor, as Judge Bennett said in *Fangman*, when approving the class action certification of the class as to West Town, this is all subject to class-wide proof. And he cited in part, a HUD regulation 12 CFR 1024 regarding the use of pattern and practice to prove the broader scheme.

Mrs. Edmondson -- on the issue of typicality, Ms. Edmondson's falls into the pattern and practice that Jay Zukerberg testified to. She settles on August the 10th, 2010 and the kickback check is issued for the Mandelberg branch referral on September 2, 2010.

With respect to adequacy, the representative plaintiffs have provided documents, answered discovery, sat for their depos. Ms. Edmondson drove up from North Carolina for her depo. She was scheduled to be on the phone now. I did not hear her announce, but I don't know whether that was part of the process. Ms. Clark would be here, but she's a nurse and has been working countless hours in the hospital through this pandemic.

With respect to the adequacy of counsel, counsel has been approved as class counsel in a number of these RESPA class action cases, and no Court has ever failed to determine that we were at the very least, adequate.

With respect to Rule 23(b), common questions predominate. When going through the common amount issues I went through this analysis. It is effectively the same issues as commonality, but with the added requirement that these common issues predominate the individual ones. Was there a (audio distortion) source of conduct? Yes. Is the testimony going to be on a class-wide basis? Yes. How are we going to prove it? Through the principals who were involved and the documents that were found on a class-wide basis. Was RESPA violated in the same manner? Yes. Are the common issues the heart of this matter? And I would say yes, that's what the predominance is all about. We are going to be able to put on one witness, one time who is going to testify to the scheme, the fraudulent concealment in one fell swoop. And the violations were concealed in the same manner.

Superiority. With respect to superiority, discovery is the same. The testimony is the same. The issues are the same. The measures are the same and doing this up to 3,400 times as opposed to one time is what predominance and superiority are all about.

Now with respect to the Defendant's arguments on the

issue of predominance, they cite diligence, the first prong for fraudulent concealment. I contend that these are actually common issues. How it was concealed in the first place is the same in each instance. And Jay Zukerberg and Brandon Glickstein are going to testify to that. It was never put on HUD-1s, it was never put in GFEs. The payments were always made through Sham LLCs and/or CAM and Marketing Creditor. The borrowers were never told. There was backdated title services agreements involved both as to Gary Klopp and Adam Mandelberg accounting for 76 percent of this class. The jury will evaluate this evidence and determine whether a reasonable, due diligent residential borrower would investigate.

With respect to the information that is available on the internet that Defendants cite to, the information is the same for all Plaintiffs. It is uniform. They're a Government press release and the importance of it certainly we disagree on, but the fact that there were Government for absolute leases, the fact that there was a court case that somebody went through Pacer. The media is the media that they have identified and can be found where they say that it can be found many years after the entire class had settled its loans and the jury evaluates their argument whether diligence requires a reasonable residential borrower per the Court of Appeals in *Edmondson* with a settlement that involved common concealments as described above to scour the internet many

years after their settlement for info as to whether the bank that did your loan was doing something wrong at the time of your loan some five to eight years prior. This issue is common for the entire class and can be evaluated as such. I can't imagine jurors buying the argument that diligence requires a reasonable residential borrower every day or once a month for up to eight years to do a LexisNexis search as the Defendant's counsel did to see whether there was any wrongdoing involved with their bank and apply the reasonable residential borrower's test. But if they get past the Motion for Summary Judgment by Plaintiffs on that issue, that would be common proof for the jury to evaluate.

What the Defendants may be really saying here is just maybe, maybe a borrower just happened to be reading the Baltimore Sun or the Washington Post on Friday, January the 23, 2015 and read the entire paper. And found on page A-12 and A-14 respectfully and saw that Wells Fargo and Chase had settled with the CFPB. There's nothing in that article about Eagle or any of its employees or the article on Friday, February the 5th, 2016 in the Baltimore Sun on the Wells Fargo settlement with its borrowers where there's no mention of Eagle or any of its employees, or the article on Thursday, April the 30th, 2015 with Genuine Title's employees and other mortgage brokers including Klopp and Mandelberg reaching an agreement with the CFPB. All these articles are buried in the

paper and none of them include Eagle. This is a lot to do about nothing. 87 percent, Your Honor, of the loans out of 3,472, 87 percent of the loans are outside the state of Maryland. 94 percent of those loans are outside the state of Virginia. So an article in the Baltimore Sun or the Washington Post would mean nothing to those folks. All these articles appear on a weekday. The subscribers to the Baltimore Sun, Maryland subscribers to the Baltimore Sun only represent 2 percent of all Marylanders. What that means out of the Maryland loans, on average, if 2 percent subscribe to the Baltimore Sun, nine borrowers would even have the subscription to the Sun. This is not attempting to find the needle in the haystack. This is the defendants trying to find a needle in the fields where the hate is grown. And guess what? There's likely no needle there. None of these borrowers were combing the papers for five to eight years to find an article on page A-12 that does not mention their bank and then figure out that their bank took a kickback five to eight years prior. 87 percent of the loans are outside of Maryland. As the Court pointed out in -- the Court of Appeals pointed out in *Edmondson*, notice of one wrong by Defendant does not necessarily trigger a duty for potential Plaintiffs to investigate other potential wrongs the Defendant might be committing. To say the proverbial needle predominates all the common issues that I've gone over in this case is contrary to

the idea of what predominance means, to be the strongest or main element.

The Defendants' citations of *Thorn* is nothing like what is found in this case. *Thorn* involved somebody trying to certify a class over I think it was 67 years from 1911 to 1974, that a white-owned insurance company had been discriminating against African Americans or blacks. And the evidence in that case was that there were churches that were preaching about this problem. There were black-owned insurance companies formed and part of their marketing was to tell the African American community that they were being taken advantage and it was a class of I think 1.4 million people with respect to that. That case was not on point with this case.

The other argument that Defendants make is the exemptions on RESPA loans create individualized issues and those individualized issues predominate. They are the strongest or main element of this case. Of the 3,472 Eagle class loans, 1,385 are identified as VA refinanced loans, commonly known as VAIRRL. These loans may only refinance an existing VA loan and a VA loan cannot be made for an investment purpose. It may only be made for primary residential purposes and we cite the VA guidelines with respect to that.

Cash out is available in very limited circumstances

and only to clear a lien against the property secured by VA loans. Because VA loans are limited to primarily residential properties, any possibility of cash out for investment or business purpose is excluded. 536 of those loans are FHA loans and they have similar restrictions and we cite those to more than 55 percent of the loans by definition and by guidelines done by the VA and the FHA are precluded from having the exempted purposes. Applying those statistics that we cite in our brief to the remaining loans, there's only about 178 Eagle class loans that would be expected to have cash out refinances. The loan documents that the defendants have would show which ones were cash out refinances and an inquiry of that nature does not predominate the common issues found in here.

Boils down further, Your Honor, the Defendant's Uniform Residential loan application would provide additional guidance as to the purposes of any cashout as we see in Ms. Clark's HUD-1 -- or in her both HUD-1 and her application that was paid off, consumer debt.

With respect to their argument with respect to the time frame of the class, Jay Zukerberg testified in his deposition that he had kickback agreements and paid Eagle branch managers or employees such as Gary Klopp beginning in 2007 or as early as 2007. The data from the Genuine Title's processing software confirms this showing the 117 loans

assigned and referred to Genuine Title by Eagle in 2007. There's no basis to amend the class definition at this point.

Today is not about the merits. The affidavits that they referred to is before we found more evidence and before Mr. Zukerberg testified in his deposition in 2016. The Plaintiffs anticipate that Zukerberg will again confirm that there were kickbacks in exchange for referrals the entire time that these folks were at Eagle.

Your Honor, frankly this is a textbook case for class certification. The common evidence is remarkable in this case as I don't know if you read the opinion by Judge Dlott or Judge Bennett, but they remarked on how much common evidence they were able to uncover. And the common facts here make it clear that one case is obviously preferable to managing up to 3,000 cases.

Mr. Maloney will talk about standing, but if you have any questions for my portion of it, I'm happy to --

THE COURT: Okay, and it probably does make sense for me to ask you my questions now and then we'll hear from Mr. Maloney on standing. Let me start kind of where you left off on the date issue. You refer to Mr. Zukerberg admitting to this scheme beginning as early as 2007. In his deposition at page 17, line 10 he says it was 2009. Can you pinpoint for me where this 2007 admission is located?

MR. SMITH: I'll see if I can find that, Your Honor.

I don't have his deposition. It's a little bit harder, I don't have a trial notebook like I normally would.

THE COURT: Can you provide it maybe by a brief letter filing after the hearing if no one finds it for you as we go on?

MR. SMITH: Yes, absolutely.

THE COURT: All right. And then in Mr. Klopp's deposition, are you arguing that he's saying kickbacks were paid as early as 2006? Some of that context seems to be missing, which makes it a bit difficult to decipher.

MR. SMITH: Your Honor, my recollection, I took Mr. Klopp's deposition and my recollection is that the testimony of either him or Jay Zukerberg was he actually began -- and Mr. Klopp wasn't at Eagle at that time -- but he actually began paying Mr. Klopp in 2005.

THE COURT: Okay, all right. And do you agree that the scheme ended on January 31, 2011, when Eagle Nationwide let go of all its employees?

MR. SMITH: Your Honor, my understanding is that they retained some of their branches and I think discovery would be necessary with respect to the affidavit that they filed, but, you know, they certainly claim that they did, but my understanding is Eagle retained some branches and whether those branches were ones that the loans came from or not I think would require further discovery.

THE COURT: Okay. All right, turning to some of the Rule 23(a) questions, do you agree that the predominance requirement in Rule 23(b) is more stringent than the traditional commonality questions in Rule 23(a)?

MR. SMITH: Yes, Your Honor.

THE COURT: Do you believe a separate analysis of commonality is still required?

MR. SMITH: Yes, commonality and predominance is required and predominance is a stricter requirement than commonality, yes, Your Honor.

THE COURT: Okay. And if the Court were to reach the conclusion that certification is appropriate at this point, do you agree that the Court would retain the authority to decertify at a later date depending, again, on evidence that might be developed through discovery?

MR. SMITH: Yes, Your Honor.

THE COURT: Okay. You made some arguments with respect to the *Thorn* case and with respect to the fact that in your view the fraudulent concealment questions are largely uniform amongst the people, but do you agree that it will be necessary for the Court at some point to probe individual class members, media consumption and exposure to information in order to assess the diligence component of fraudulent concealment? Understanding your view that the concealment part, the actions that were taken to conceal would be common

amongst the class members.

MR. SMITH: Your Honor, I think with respect to satisfying the diligence requirement, that is, Your Honor, as set out in *Edmondson*, what a reasonably diligent residential borrower would be required to find. I think that is common throughout the class and does not require an individual. And letting the jury know what is common, which is, you know, if you did a LexisNexis search like an attorney does or defense counsel did in this case, this is what was out there on the internet as of January the 23rd, 2015 or whatever date is associated with that. I think the jury did evaluate that on a class live basis as to the reasonable diligence. But with respect to my proverbial needle in the hayfield analogy as to actual notice, I think, you know, a lot of the items cited by defense counsel are trade magazines or trade newspapers, Mortgage Daily, Credit Union Times and stuff like that that are not even available to consumers. But, you know, if we're going to chase the needle in the hayfield, and I would submit that the defendants could have taken -- we have all the addresses and telephone numbers and information on these borrowers. If they really thought that there was a punitive class member out there that would have seen this stuff, there could have been depositions taken to prove that this is not a common issue, that nobody would have seen this stuff. They could have taken those depositions. They chose to

strategically not. I think it is highly, highly, highly unlikely that anybody ever saw any of this information. And the diligence part can be done by common proof. But if the Court said, you know, hey, even though that is the remotest of remote possibilities, we've got to ask each one of these folks whether they saw any of this material, then it could be done by questionnaire or we could design something. And it may be prudent to ask the jury in a common way even if they would have seen this would it have meant anything on your own issue of diligence. Because the information never -- none of the information that they cite cites Eagle, except for the Pacer stuff and I can't imagine anybody signing up to subscribe to search on Pacer. So I don't know if that answers your question, but I was trying to.

THE COURT: It does, thank you. Okay, I don't think I have any more questions for you. Before I hear from Mr. Maloney, though, you raised a good point. It does make sense for me to put on the record whether is Ms. Edmondson on the line?

MS. EDMONDSON: Good morning, Your Honor. Yes, I am on the line.

THE COURT: All right, good morning, Ms. Edmondson. And Ms. Clark, do we have you on the line?

MR. SMITH: She works at Johns Hopkins and I know that --

THE COURT: Okay, you mentioned that. I just wanted to make clear for the record who we had on the line as representative.

All right, then Mr. Maloney, we're happy to hear from you on standing.

MR. MALONEY: I've now been unmuted, thank you, Your Honor. I'll begin with what the approach should be for the Court on standing and we believe that the case law is quite clear that the Court should take the class certification approach. This was described in great detail by Judge Hazel last October in the Williams versus Potomac Family Dining case. And he surveyed the case law on this and said that he found that two other district courts in the Fourth Circuit have adopted this approach. It appears no other district courts have adopted any other approach and this appears to be the overwhelming approach in other circuits and other federal courts.

In 2015 the Ninth Circuit did somewhat of a survey in the *Melendres* case and they found that it was the overwhelming approach adopted in most federal courts throughout the United States. We have found that it's been adopted in the Second Circuit, the Third Circuit, the Fifth Circuit, the Sixth Circuit, the Ninth, Tenth and Eleventh Circuits. We have found no circuit that has not adopted that approach.

As Judge Hazel pointed out that under the class certification approach, once the main plaintiff demonstrates her individual standing to bring a claim, the standing inquiry at that point is concluded and the Court then proceeds to consider whether the Rule 23(a) prerequisites for class certification have been met. As the Tenth Circuit says, there are practical reasons why you go in this direction. Standing is a threshold issue at this point only for the class representatives and that at that point, the courts should proceed to address the Rule 23(a) considerations about the relationship between the class representative and the members of the class.

As the District Court in West Virginia observed in the *Hendrick* case in 2017, once the main litigants have established standing, this conclusion does not automatically establish that they meet the Rule 23 standards, but it does shift the focus of the examination from the elements of justiciability to the ability of the main plaintiff to fairly and adequately protect the interests of the class under the Rule 23 factors that Mr. Smith has just outlined and discussed in detail.

With respect to the particular standing in this case, I should note for the record that standing was not raised initially in a 12(b)(6) or 12(b)(1) motion. It was not raised at any time during the lengthy appeal of this case in

the Fourth Circuit and it was not raised until really the opposition to the Motion for Class Certification had been pending for some time.

I'd like to begin on the standing issue by addressing Mary Edmondson's standing. As the Court heard just a few moments ago, her loan was in August of 2010. It is not in dispute that what Mr. Zukerberg did at the end of that month and in early September was he took off of each of the loans for the previous month, a sum we believe was equal to approximately or more than $300. He used that money to pay a kickback. He sent the kickback in the form of cash at that point on September the 2nd. The source of that fund was line 1100, the settlement services. What his practice was for all of these was to bake in the 3 or $400 kickback into the settlement services that appeared on line 1100 of the HUD. He then used those proceeds on a per loan basis each month to provide the kickback which was in exchange for the referral. There were no legitimate title services that were provided for the amount of the kickback that was baked into the cost of the settlement services.

The Defense has raised a report from Mr. Yerman that suggests somehow that Ms. Edmondson paid below market rates. We think that that actually -- that report actually shows the opposite in terms of Ms. Edmondson and others which I'd like to address now.

First of all, we should point out that Mr. Yerman's report was incomplete. His opinions and methods do not meet the requirements of Federal Rule 702. And additionally, this should be subject to discovery cross-examination and other review and litigation that would occur with an expert opinion in the course of class certification litigation and not as being shoehorned into an opposition to class certification for the first time. And the scheduling order that the Court has issued has provided for just that type of discovery. I would point out that Mr. Yerman did not attach HUD-1s to his report and we did. And what it showed was that Mr. Yerman had cherry picked nine loans from really an undisclosed overall sample presumably in the thousands or tens of thousands over his 30-year career. How they were selected is unclear. And then when we look at the HUD-1s themselves, we find that a number of those are not comparable in any way. Only four of the nine loans chosen for comparison list a fee for title examination. And title examination is the only settlement service that was listed on Ms. Edmondson's HUD-1. Five of the HUD-1s -- the other five HUD-1s that Mr. Yerman relies on do not list any title examination at all. They're not comparable and they should not consider. So we're now down from nine to four.

Additionally, of the cost to Ms. Edmondson, she is charged an extraordinary amount for a title examination, $440 and I will explain now why that is extraordinary. The first

two sample loans charged were $295 for a title examination, but Ms. Edmondson paid $145 additional than that. And that is something that under her particular circumstances was extraordinary in this case given her particular history and given the limited need for title services that she had in this particular case.

We also would point out that the same issues hold true with respect to the Clark and Neil loans, and we believe that Ms. Clark's abstract charge stands out three times higher than what Mr. Yerman's market rates and Ms. Neil's abstract is four times higher than the market rates.

We also in looking at the bigger picture show that these charges are in an environment here when we look at the HUD listings for mean, medium charges state by state, Maryland is already extremely high and we believe we can show that is because of the prevalent practice of kickbacks that we've demonstrated in this and other cases. But even when we look at Maryland's high charges, Ms. Edmondson's $440 charge is 35 percent above the Maryland average, 70 percent above the state median and close to the top 80 percent in fees, which is extraordinarily high and we believe violative of the reasonableness guidelines that show that are in 24 Code of Federal Regulation 203.

So put simply, we believe any assertion that Ms. Edmondson paid below market rates are belied by the evidence

and it actually shows the opposite, that she paid much higher market rates here based upon the circumstances and based upon what happened here.

I want to point out that particularly in Ms. Edmondson's case, this is extraordinarily true because her 2010 refinance came only one year after a 2009 refinance. So because it only required one year of a title search as opposed to a typical title search that may go back decades, and this was only a low cost refi for a condominium, the idea that that kind of one-year title search after a 2009 refinance should yield that kind of title examination is very strong evidence in itself that she was excessively titled. And then when we couple that together with Mr. Zukerberg's admission that baked into each one of these that the source of his funding for kickbacks was these proceeds here and that as he said on page 70 of his deposition that if he didn't have to do it he would have willingly given the funds back or remitted them to the borrowers, but he felt he had to do it to compete. I think we have strong, strong evidence of actual harm and injury. In fact, overwhelming evidence really and that we compare this to the *Baehr* case recently issued by the Fourth Circuit where the plaintiffs there didn't allege that they had, in fact, any particular overcharging or that they paid more. Instead they made a nebulous claim that they were denied the benefits of market competition, that they were not

prepared to quantify with any specific or concrete injuries. So we believe that the standing evidence is strong and particularized here. We believe that Mr. Zukerberg's evidence is strong evidence of this as well and we believe that in this particular case, the pattern and practice was overwhelming which was to take funds in every case and not just Ms. Edmondson's, write off the line 1100 at the end of the month and remit it as a kickback from the borrower. The charge is not for title services and to do it in exchange for a referral in clear violation of RESPA.

I want to address the issues involving Chemene Clark. As the Court knows, the case was filed on behalf of Chemene Clark and Janet Clark. Janet Clark has now been diagnosed with severe aphasia resulting from a stroke and cannot testify. And we do not believe she can any longer fulfill the role of a class 23 representative. And so she's been withdrawn as a proposed class representative.

The Defense has moved to in their objection to class certification, is now alleging that Chemene Clark lacks standing because she went through a Chapter 7 bankruptcy in 2012, years before she was aware of any RESPA claim against any of these particular defendants. I want to point out that this issue was never raised prior to the opposition to class certification. The defense was aware of this as recently as January -- or as long ago as January the 10th, 2020. Based

upon the Pacer receipt for her bankruptcy docket we had interrogatories and initial disclosures where these issues should have been raised, but the defense remained silent until filing its opposition for class certification.

We want to tell the Court and we've said this in our pleadings, that Ms. Clark was entitled to reopen her bankruptcy estate so that she could continue to enjoy her claim as a class representative. And by doing that, she would petition to apply the remaining $1,700 in bankruptcy setoffs and request the bankruptcy trustee to abandon any claim for the remaining value of the RESPA claims. Once the defense learned that Ms. Clark would do this and had retained bankruptcy counsel for this purpose, they intervened and separately and privately made an offer to the bankruptcy trustee to settle Mrs. Clark's claim for more than the claim's value. And the trustee then moved for approval of the settlement offer. Ms. Clark has objected stating that the offer is not a good faith settlement, but instead is being made for the purpose of defeating her class action standing in this case and an inexpensive way for the defense to attempt to escape liability for the more than 3,400 RESPA claims in this class. So while that motion which is now pending and has not been ruled on and as long as it is pending her standing is not extinguished.

In the meantime, Mary Edmondson is more than capable

of representing the Eagle's class. Additionally, we would point out that the Fourth Circuit has a liberal policy in favor of substitution of class representatives and that district courts have routinely allowed the substitution of new class representatives after the original representative has been disqualified. In view of the circumstances of this case, particularly in view of the fact that Janet Clark now suffers from aphasia and that we don't know what's going to happen with Ms. Clark's motion before the trustee, should she be disqualified, we would request the Court leave to put in a -- to substitute a new class member, Ms. Neil. She meets all of the qualifications to be a named plaintiff. She's never filed for bankruptcy. Her claim is identical to all the other Eagle members' claims and we would request that in the event that Ms. Clark could no longer continue.

Your Honor, there are other things I can say about Mr. Yerman, but at this point I'll wrap up the standing issue. If the Court has any questions, I'll be happy to answer them.

THE COURT: Okay, thank you. That was very comprehensive, so I just have a couple to make sure that I understand your position. So you are only raising Ms. Neil as a substitute in the event that Ms. Clark does not prevail in her appeal in the bankruptcy?

MR. MALONEY: That's correct. We'd like to proceed with Ms. Clark, but if for some reason her motion and her

objection is not sustained and the bankruptcy proceedings prevent her from proceeding, we would make a formal request to the Court to substitute Ms. Neil.

THE COURT: And in theory if Ms. Edmondson were determined to have standing to pursue her claim though, you would prefer to make sure you have two, but presumably we could proceed simply with Ms. Edmondson if she were found to have standing?

MR. MALONEY: That's correct, Your Honor. We could proceed with just Ms. Edmondson, but things happen in life as we saw from the other Ms. Clark and we certainly want to be in a position to have at least two, and perhaps three.

THE COURT: Okay. All right, I think I understand your position and I think I'm ready at this point to hear from the Defendants.

MR. BECKER: Good morning, Your Honor. And may it please the Court, let me just first start by giving a broad intro to where we're going and then we'll get into the details. I think I'll start with standing even though Mr. Smith admitted remarkably that there's no question that an individual inquiry would have to be done related to the notice issues, but I will get to that.

The bottom line is that Plaintiffs have not and cannot meet their burden that a class can be certified here for two reasons, though either one in and of itself is enough

to deny the motion. First, neither of the two proposed class representatives actually before the Court have standing, Chemene Clark and Mary Edmondson. And without standing, individual standing, they cannot meet this constitutional threshold requirement and their individual claim must fail alongside the class claims.

Chemene Clark's claim does not belong to her. It is the property of the bankruptcy estate and therefore, controlled by the estate. Plaintiffs don't even dispute that. The bankruptcy filing precludes her from pursuing that claim.

Mary Edmondson lacks standing because the uncontroverted evidence of record before the Court shows that she paid below market value for the title services she complains of. And under the Fourth Circuit's recent decision in *Baehr*, this failure means Edmondson lacked the type of concrete particularized harm required to proceed. Plaintiffs' improper eleventh-hour request to substitute in a brand new class plaintiff identified just last week, not properly before the Court. Moreover, it's a remedy the Court has already granted last December so that the Plaintiffs could add two proposed class plaintiffs, which neither one of which are able to serve the class representative, either of the Clarks.

But even if the Court could get past the insurmountable standing hurdles shackling each of the proposed class plaintiffs, the class still couldn't be certified

because the individualized issues related to the statute of limitations which Mr. Smith admitted to in his argument, as well as identification of class member issues that were raised after *Baehr*, those overwhelm the common question such that there is no way to get a class certified here.

There was a lot of publicly available information relating to this exact supposed scheme out there and detailing the very two brokers who worked with these proposed class representatives. And according to Plaintiffs, more than three-quarters of the entire class that was out in the public domain for years before the lawsuit was filed and class members exposed to that information were either on actual or inquiry notice of their claims which triggered their own statute of limitations. And the only way to determine that is through individualized mini-trials to decide who knew what and when.

Further, *Baehr* recently decided by the Fourth Circuit makes clear that to pursue a civil RESPA claim, there has to be an overcharge, proof that the title fees complained of were unnecessarily increased and individualized issues predominate as to who could even be in a RESPA class and how the class can be identified. Plaintiffs' theory is just that a kickback equals an overcharge so that the class is simply all borrowers from Genuine Title. It never made sense in light of the evidence in this case. Indeed, as we point out

in our papers, the testimony of Genuine Title's president rejected that, but now it definitely is not viable after *Baehr*. Plaintiffs have not proffered any way to identify on a class-wide basis, who is in the class and actually had an overcharge or their title services unnecessarily increased because of a RESPA issue. This isn't like a consumer false labeling class where everybody paid the same thing for a jar of falsely advertised tomato sauce. Here everybody paid different title fees and the only way to discern the overcharge is to do an in-depth analysis of the title charges and the Plaintiffs proffer no way to actually do that and that's their burden, not ours.

Turning first to the individual standing issue and let me start with Chemene Clark. In light of the standing arguments Defendants made in the opposition, they appear to abandon Clark because that's what they did in their papers. Today they seem to be hedging taking a little bit of a different path. But either way, the answer is still the same.

Janet Clark was originally proposed as a class plaintiff in December, but then almost immediately withdrawn by Plaintiffs because she had severe medical issues which they recognized could not mean that she could serve as a class representative. That didn't just happen. That's been that way for a while. So that's incorrect, which is what Mr. Maloney said. But now rather than offer any real defense of

the selection of Chemene Clark, they want to improperly sub in Ms. Neil. But focusing on Clark, they offer no legal argument whatsoever as to why Clark has standing to pursue her claim in light of the bankruptcy, nor could they because the law Defendants' cited in the opposition brief which is page 15 and 16 is clear that since Clark filed for bankruptcy in 2012, any claim she had in this case belonged to the bankruptcy estate and not to her personally. And this is true regardless of whether Clark knew about that at the time she filed the bankruptcy petition in 2012. Clark filed her bankruptcy after her loan closed and before she filed this case not listing the claim as an asset. And she got a discharge in 2013. Now in an exquisite confession that is the bankruptcy estate and not Clark that has standing to pursue the claim, in late March 2020 Clark filed a motion to reopen the bankruptcy proceedings in order to schedule this claim. Now the trustee did not abandon the claim, nor was he required to, Plaintiff seems to suggest, and instead moved the Bankruptcy Court for the approval of a settlement that in his judgment is fair and in the best interest of the creditors. That motion is properly before the Bankruptcy Court and its merits do not matter here. As such, Clark has no standing and not only can't she serve as a class -- she can't serve as a class representative, her claim must also be dismissed.

The Plaintiff's conclusionary statement that Mr.

Maloney just reiterated from their brief that while the motion remains pending before the Bankruptcy Court is wrong as a matter of law. That conclusion when they put it in the brief was unsupported by any legal citations to authority because it's plainly contrary to the law that Defendants pointed out in detail in our opposition.

The Plaintiffs now try to cast aspersions about the nature of the settlement with the trustees, but the bottom line is that Clark has no rights whatsoever to this claim. It's the bankruptcy trustee, an attorney named Charles Goldstein, who has the sole authority as the proper representative of the estate to make all decisions related to the claim. That was the only person that Defendants could discuss the claim with. And this isn't an attempt to pick off a class representative because Clark never had standing to bring the claim in the first place. He's not even a proper party in the case. And anything that happened as a result of her own actions in filing the bankruptcy is not anything Defendants did.

And finally, the notion that Defendants should have informed Clark's own counsel of the fact that their own client filed for bankruptcy by updating their discovery response is just absurd on its face, Your Honor. Defendants have no obligation to provide discovery on matters equally available to the Plaintiff or that are discoverable through a search of

public records or frankly, a conversation with their own client which apparently never happened. Plaintiffs are simply scrambling to cover up their own failures to do a proper and adequate investigation before filing a complaint on her behalf.

With respect to Ms. Edmondson's standing, she lacks standing because she paid below market rate for the title fees at issue. Now since the Defendant filed their opposition in February, the Fourth Circuit decides in *Baehr vs. The Creig Northrop Team* case and determined Defendants' position that an unnecessary increase in title services fees is required to pursue a claim into the law of this circuit. The Fourth Circuit analysis in *Baehr* provides the Court a roadmap to confirm Edmondson has no standing. Like here, *Baehr* was a RESPA case where the Court was faced with allegations that payment of marketing services in exchange for real estate closing business referrals. There the plaintiffs paid discretionary title fees of $425. The Court split out the discretionary title fees from the rate filed title insurance fees where there's not discretion. The Court also referenced that plaintiffs there paid, quote, "similar discretionary fees of $520 for a prior home purchase." *Baehr* explains that a statutory violation divorced from any concrete particularized harm that hurts the Plaintiff in a personal way is not enough to give her standing.

So for civil liability under RESPA, the Plaintiff must prove that there was an overcharge. *Baehr* says, quote, "recognizing that a violation of RESPA does not always result in a type of harm that Congress sought to prevent is not to say that kickbacks that do not cause overcharge are insulated from liability under RESPA." And the Court went on to explain that the remedy in that situation is criminal penalties or Government enforcement actions and the latter of which actually occurred in this case. The Court in *Baehr* held that $425 paid in discretionary title fees was reasonable and they said that they do not discern from *Baehr's* emphasis on the payment for settlement services any harm other than the Defendant's purported RESPA violation. The Baehrs received settlement services for which they paid a reasonable rate regardless of whether that payment was thereafter repackaged as a kickback. The exact same thing can be said here.

So when the facts of this case and the record before the Court are viewed through the lens of *Baehr*, the conclusion should be the same here. Edmondson lacks standing. She paid nearly an identical amount in discretionary title fees as did *Baehr* -- as the Baehrs did. $425 versus $440. And the conclusion that those fees were reasonable is supported by three pieces of evidence submitted by Defendants. By contrast, Plaintiffs have offered no actual evidence to dispute this. There's the expert report first of Bill Yerman.

In November, Defendants served on Plaintiff the expert report of Mr. Yerman who is a title services professional with 30 years of experience in this industry here and in Maryland and nationwide. Mr. Yerman analyzed the title fees that Edmondson paid, and based on his 30 years of experience which included running a title company headquartered in Baltimore at the time this loan was made, concluded to a reasonable degree of professional certainty that her title fees at issue were well below the market rate charged at that time by other title companies. Yerman also concluded that based on his extensive experience in the industry, Edmondson was not overcharged. That is also consistent with the testimony of Jay Zukerberg that we point out in Exhibits 38 and 39 of our opposition. He was deposed twice, two different times, each time testifying that he did not change what he charged his customers based on the existence of any kickbacks. The notion that Mr. Maloney and Mr. Smith said that a kickback was based into every settlement fee is not supported by the record. It's not there because it's not true. His charges were the same and then what changed was how much Genuine Title would make on a given loan if there was a kickback. He specifically stated under oath he was not passing on the kickbacks to the borrowers. He wasn't increasing their title fees. He also added that JM Title's rates were competitive with the other title companies for those fees and they were not overpricing because of any

kickbacks.

The third piece of evidence confirming that Ms. Edmondson lacks standing is what was in her good faith estimate. Prior to a loan closing, borrowers get a good faith estimate of what the fees are going to be in connection with closing of their loan. Here Edmondson received a good faith estimate of her total title charges, but the GFE did not come from Genuine Title. It was from another title company that has never been accused of any wrongdoing. So it offers an additional data point on what a market rate was for the title services on a loan like Edmondson's. The GFE set the title services there at $1,003.50. So ultimately by using Genuine Title, Edmondson actually paid less than what she would have if she went with the title company chosen in the GFE.

So what Plaintiffs do is they resort to an attack on Yerman's conclusion, but they don't offer any evidence of their own to rebut them. And the notion that there should have been discovery with respect to the Yerman report as Mr. Maloney raised, they had the Yerman report in the beginning of November. There was months of discovery still in the class certification phase left to be done, but the Plaintiffs chose to do nothing. They never even deposed Yerman. And their attack on his conclusions are misguided for a number of reasons.

First, his conclusions were based on his 30 years of

experience. He's seen thousands and thousands of loans in his career, so he knows what title fees are reasonable. The HUD-1s he selected were similar to Edmondson's transaction. It was a refinance deal from the same time, general time frame and geographic market as Edmondson's loan. That's the universe he was looking at. And that review of those HUD-1s simply confirmed his own conclusions that Edmondson's discretionary title fees were below market rates.

Second, Plaintiff's desire to go HUD-1 by HUD-1 and engage in an analysis of the specific types of fees paid to parse out whether there was an overcharge, shows the type of individualized inquiry that's needed here to determine who can actually be in the class. *Baehr* makes clear that increased fees resulting from the alleged kickbacks are a prerequisite to pursue recovery and they've not proffered any objectively reasonable way to identify appropriate class members on that basis, because their operating theory is that as long ago it was Genuine Title, it must have been a kickback and it must have been within the class. But that theory is no longer viable because as I said, it contradicts what Zukerberg testified to, but it also is no longer viable after *Baehr*. Edmondson herself is actually a prime example of that because she had not one loan in the class period, but two loans. Mr. Maloney referenced her prior loan. What he didn't say was she paid $175 for title fees on that first loan. That loan by

their class definition is in this class. So that shows surely there are other loans in this class where they concede there's no overcharge on the first loan, so there's no way to prove that there was an overcharge on a class-wide basis.

Finally, their analysis as to the individual HUD-1 title charges is also deeply flawed. To rebut a Plaintiff -- excuse me, to rebut Mr. Yerman's expert opinion which is relied on 30 years of experience, the Plaintiff also really -- and Mr Maloney gave it away in his remarks. He said we think, we think the report is suspect. The issue isn't what they think, it's what they can prove. And they have offered nothing to prove that Mr. Yerman was incorrect. The only thing even approaching any authority offered is this supposed March 2010 chart which they say is from HUD, which is a two-page submission with no indication of where it's from, has unexplained handwriting all over it and no context about what the purpose of the chart was or how it was put together. It's hardly evidence of anything. And let me tell you, we have searched the internet far and wide. We can't find this anywhere. There's a reason that courts require citations for authority. I have no idea where it's from or from what larger continuum it might have been a part of, but I'd sure like to see it. But even if the Court were to lend any credence to that study, if you can call it that, Defendants point out an actual authoritative HUD study from June 2012 that we gave you

the entire study, Your Honor to review, and it shows that reading the tea leaves on the reasons there are variations in title charges is an impossible task and therefore, it cannot just be assumed as Plaintiffs would like this Court to do that higher fees in a particular transaction are the result of an overcharge, especially in light of all the other evidence to the contrary. The bottom line is that Plaintiffs have nothing to rebut Defendant's record of evidence that Edmondson charged title fees were reasonable.

So with no overcharge to point to, the Plaintiffs resort to trying to prove the particularized and concrete injury *Baehr* requires a different way. They rely on the March 2000 affidavit that they drafted for Zukerberg, Your Honor, but incredibly they still misrepresent what it says. They claim it says a minimum of $300 of the title and settlement services on Ms. Edmondson's loans were split and kicked back. Read the paragraph, Your Honor. That's not what it says. All that paragraph says is that Zukerberg was simply explaining how the kickbacks worked in a general way. It doesn't say anything about the customers or how they were charged or that Edmondson's title fees were split. This is just confirmation that the harm Edmondson is complaining of is simply a recitation of the RESPA statutory violation which *Baehr* specifically rejects as a viable legal theory.

Further, the affidavit is not inconsistent with what

Zukerberg's prior testimony was that customers were not overcharged.

Second, Plaintiffs point to a contrived hypothetical. They both, Mr. Smith and Maloney mentioned this idea that Zukerberg testified and again, this is a quote, he quote, "guesses" that if a broker asked him to give the borrower some money back instead of paying kickbacks, he would be happy to do it. This is exactly the type of hypothetical conjured up injury that *Baehr* community rejects. It's literally a hypothetical. But even if it were not a pure hypothetical scenario, it doesn't shed any light on the only questions that matter under *Baehr*. Is there an overcharge? Here the answer is no. But if she's charged reasonable for services she received, here the answer is yes. That ends the inquiry.

Finally, Plaintiffs point to that previous refinance transaction, but as I stated before, the 2009 loan is part of the same class and she paid less which is an admission that that loan, there was no overcharge which leads to the same individuality problem which abounds in this case.

Now, their answer for the fact that neither of these class representatives that they've chosen lack standing is they want to have this eleventh-hour substitution of a new person that they identified for the first time last week in a reply brief. Their request isn't even properly before the

Court. It's well settled that Plaintiffs can't do the reply brief to add an entirely new party to the case. There's no motion for leave to amend, no amended complaint, and of course no discovery whatsoever related to this individual. The cases that Plaintiffs rely on to claim that the liberal substitution is permitted do not aid their cause. They rely on cases where the class had already been certified like *Cox* and *Chisolm*, cases that did not even address the proposed class claim of Article III standing, like Standard or International Woodworkers, or cases where there was not a properly developed record on the standing issues like International Woodworkers in Mcadam. Plaintiffs often seriously rely on *Booth v. Prince George's County of Maryland*, but that case definitively proves the very point Defendants make. There, the Court held that where a named plaintiff is dismissed for lack of standing and the class has not been certified, the Class A claims must be simultaneously dismissed because it's a constitutional issue. In fact, there in *Booth*, the Court originally agreed to give the plaintiffs 30 days to try to find a new class representative to claim the standing problem, but the Court issued a supplemental opinion saying that was wrong and they relied on two Supreme Court cases. One was *Sosna v. Iowa* saying that they should have just dismissed the claims because when a class plaintiff, proposed class plaintiff has no standing, there's no class certified, there is no class to

discuss. The remedy is dismissal.

This isn't even the first time Plaintiffs have substituted in new proposed class reps in order to address the prior standing concerns. The Court permitted the plaintiffs to do that already in December allowing Chemene and Janet Clark to come into the case. They've already had their chance to solve Edmondson's standing problems which contrary to what Mr. Maloney said that it wasn't raised until well after the class certification opposition, that's just simply not true. Defendants raised Edmondson's lack of standing back in July when we answered the complaint. We specifically said she lacks standing because she didn't pay marked rate -- she paid below market rate for title services. So their solution is equally deficient. These failures rest entirely with the Plaintiffs. So for these reasons, Your Honor, neither Ms. Clark or Ms. Edmondson have standing to pursue their claims and their individual claims along with the class claims that they tried to represent, by law, must fail.

Turning now, Your Honor -- I'm going to move, Your Honor, to the individualized issues, the Rule 23. So let me pause there and see if you want to break it up, ask questions or if you'd like me to keep going or you'd like to ask questions that are standing specific.

THE COURT: That's fine, I'm happy to ask a few standing questions now. First, if I were to -- understanding

you disagree with this -- if I were to find that Ms. Edmondson has standing to pursue her claims, you concede that all we would need is one class representative for it to proceed forward?

MR. BECKER: Yes, recognizing we think Ms. Edmondson has no standing, yes, Your Honor. I would agree with that.

THE COURT: And you talked something about the *Baehr* case, but that case seems to be different because in that case the homeowner had acknowledged and explicitly stated that she was not overcharged. Here there seems to be a factual dispute between the parties as to whether there was an overcharge or not. As we heard from Mr. Maloney, the Plaintiffs are claiming that they paid significantly more than what was warranted and you have Mr. Yerman's expert testimony suggesting otherwise. Doesn't all of that kind of go to the merits of the case rather than an initial standing issue in class certification?

MR. BECKER: No, Your Honor. I think it has to be decided now. Number one, as Your Honor well knows, if the class certification lacks standing, while the merits do not matter and the Plaintiffs' likelihood of success on the merits do not matter, there is often times some merits adjudications that need to be made or considered in connection with class certification. *Baehr* also concluded that the title services paid there were reasonable. *Baehr*, if you look at the

opinion, *Baehr* actually concluded that the $440 paid was reasonable, there was no overcharge. So that absolutely is applicable to this case. So I don't think it's a little bit different.

THE COURT: Well, except the homeowner there was acknowledging that the homeowner did not believe she had been overcharged. Here we have both an allegation of an overcharge and a contention that the services that Ms. Edmondson received were inadequate. In *Baehr* they seem to say the services were adequate, but we were not overcharged, but we should have been allowed the ability to enjoy competition with respect to our services. So it seems to me to be a bit of a distinction on a couple of points in terms of the precise allegations that the Plaintiffs are making.

MR. BECKER: But we're well past the allegations point, Your Honor. We're at class cert now where they've got to prove that they do have standing. And that's a threshold issue and they've offered no proof to show that there was an overcharge. That's the crux of the issue, right? Defendants have offered proof that there was no overcharge as I explained, right? The Yerman report. The GFE. Zukerberg's own testimony. To rebut that and this is their burden, they've offered nothing. So they can't just rely on allegations and say this is what we think happened. We have actually evidence hearing proof that they can't rebut and they

haven't.

THE COURT: Okay, all right. I understand your point. Why don't you move on to the other issues.

MR. BECKER: Happy to, Your Honor. So moving on to the fact that individualized issues relating to determine who is actually in the class predominate and precludes class certification here.

Repeatedly in Mr. Smith's argument he kept talking about common questions, common questions, common questions. But it doesn't matter what the common questions are. What matters according to the Supreme Court in *Dukes* is are common answers possible on a class-wide basis? And here the answer is no. The analysis of Plaintiffs misses I think both the point of the commonality and the predominance inquiry, as well as the key questions that must concern the Court here.

What the Court should be focused on here is how all of the publicity evidence in the public record beginning in 2012, namely *Baehr*, what happened here, impact the statute of limitations analysis for individual class members. The impact is significant. There was ample information in the public record laying out the details of what happened and putting anyone in the class who saw the information, on notice that they had a potential claim related to their mortgage loan. Even putting aside the fact that lawsuits were kicking around this court going all the way back to 2012 in the *Roach* case

and then *Fangman* and a series of those cases that were going through the courts in 2013, '14, '15 which lays out all of the details about the scheme. There were these Government enforcement actions that I alluded to earlier that resulted in numerous press releases, extensive coverage in local and national media outlets in 2015. You had a first wave in January 2015. We point to the specific articles in our brief, in our exhibits. Those are exhibits that -- the press releases are 5 and 6. The articles are 7 to 13. These articles, including ones in the Post and the Sun specifically mention Genuine Title by name and made clear how this kickback operation supposedly operated. Then a few months later you've got another wave in April, 2015 CFPB and the Maryland AG were at it again issuing more press releases outlining new enforcement actions against Genuine and the individual brokers who worked directly with the two proposed class members here, Adam Mandelberg and Gary Klopp, as well as Angela Pobletts, another broker that is implicated in this case as well. Those press releases lay out in painstaking detail how the scheme worked and how Klopp and Mandelberg were involved. The press releases were also covered by various local and national outlets. We put that in our brief as well. In May there was more press because the CFPB and Maryland Attorney General announced proposed settlements with Genuine Title and Mandelberg and Klopp and others, and those were also covered

by local and national media outlets. We have a compendium of those results at Exhibit 25.

So as Judge Bennett previously found, all of the information about what happened here with Genuine Title and these brokers and its precise contours were fully available by mid-2015 at the absolute latest, more than 18 months before the case was filed, in full view of any class members.

So with all the information out in the public for years before it was filed, it begs the question of which class members read, saw, or heard the news about Genuine and their individual loan brokers and what they did in response to it. That is the problem that prevents certification here. Class members who are on actual or inquiry notice about their claims more than a year before their case was filed are barred by RESPA's one-year statute of limitations, you can't be in the class. And the only way to make that determination is through a class member by class member inquiry for a type of individualized inquiry that the Fourth Circuit says precludes certification. I think the Plaintiffs misapprehend the issue to be decided along with our arguments as to why the statute of limitations issue precludes certification. Because their theory as laid out in their reply brief and expounded upon today is that the only time that matters for purposes of class certification is whether there was fraudulent concealment and a lack of notice and diligence at the time of the loan

closing. And our argument and the real issue before the Court is not what happened when the loan closed, but what happened in the subsequent years as word of the scheme was broadcast for everyone in the world and the class to see.

Plaintiffs' view is that once there was an original concealment, the inquiry is over. But that's wrong as a matter of law and that interpretation has staggering consequences. What Plaintiffs fail to understand is once there has been a fraudulent concealment, the statute of limitations inquiry isn't voided for all time. The Fourth Circuit in *Marlinton* which is Plaintiffs' favorite case, made clear that the consequence of the concealment is that the limitation period does not begin to run until the Plaintiff discovers the fraud.

Another Fourth Circuit case relied on by Plaintiffs, *GO Computer*, hammers this point home. Fraudulent concealment doesn't stop the clock, it just moves the clock starting it from when the wrong was discovered rather than when it was committed.

So where that leaves us is even assuming there was fraudulent concealment at the time of the loan, the clock would still start for each proposed class member when they knew or should have known that they could have had a claim. Information that could have been amply supplied by press releases and the intended news articles the Defendants have

shown were out in the public domain as Judge Bennett said, no later than May 2015, 18 months before the case was filed.

Plaintiffs' theory is consistent with the way they conducted the case which is just goaling out new class plaintiffs by sending waves of solicitation letters whenever it's convenient for them. They do it again on this motion claiming that they have a new proposed class plaintiff ready to go in light of the standing deficiency. The implications of the Court signing off on that are profound because it turns Plaintiffs' counsel, and not Congress, into the master of the statute of limitations for RESPA claims. And Judge Bennett previously expressed concern over that exact issue.

The Fourth Circuit's decision in *Thorn* is instructive here. And the Court there denied certification resolving the statute of limitations -- because resolving the statute of limitations issues would depend on an examination of the particular circumstances of each individual. There the Court was faced with certification on a case involving discriminatory insurance practices. And the position staked out by the parties are similar. Defendants argued that because individual class members could have been exposed to sufficient information to give them actual or constructive knowledge of discrimination, required individual hearings of each class member to determine when and if they learned of the information that would give rise to the claim. Plaintiffs

claim that the question could be resolved class-wide because Defendants hadn't shown that any class member was exposed to any of the information. This District Court denied certification that was ultimately affirmed by the Fourth Circuit. The reason for that was because there were numerous sources of information available that could have alerted the class members that there was a problem. And the Court, the District Court said the Court cannot assume that none of the members of the proposed class gained sufficient information to put them on inquiry notice at some point which would result in their claim being time barred.

The Fourth Circuit for its part held examination of whether a particular plaintiff possessed sufficient information such that he knew or should have known about his cause of action would generally require individual examination of testimony from each particular plaintiff to determine what he knew and when he knew it. The Court went on to say, in cases where the legal issue is focused on what the Plaintiffs knew, it consistently held that individual hearings are required.

The Fourth Circuit also made clear that the record must affirmatively reveal that the resolution of the statute of limitations defense on its merits may be accomplished on a class-wide basis. Mr. Smith admitted that can't be done here. He's talking about jury questionnaires or other things that

they can do to try and figure out what Plaintiffs knew and when. That absolutely is impermissible under the law in the Fourth Circuit. It's exactly the type of individualized inquiry that requires denying class certification.

The *Thorn* Court also addressed how the issue plays out in a fraudulent concealment context like the one we're dealing with here. The Court there said, we cannot say that the class members' unawareness of their cause of action is a natural inference of the Defendant's concealment. And at any rate, evidence of unawareness of the cause of action is information uniquely in the class's possession, a fact that defeats and necessitates of a presumption in the class's favor.

The Court also stated that is reason to imply that what it called the analogy context of equitable tolling, specifically citing the *Marlinton* case and severing *Thorn's* applicability here. The fact that Plaintiffs now say that *Thorn* has nothing to do with this case is curious because first they forget that they affirmatively relied on *Thorn* in their own motion admitting its applicability here. And second, *Thorn* explicitly calls equitable tolling citing *Marlinton* as the chief fraudulent concealment case in this circuit as an analogous case. *Thorn* is directly on point here and the Court's reasoning by any situation where there needs to be an inquiry of what Plaintiffs knew and how that

knowledge impacts the statute of limitations.

What they're asking this Court to do is impermissible under *Thorn*. It quite simply assumes that well, there's just these articles and it was on A-12 and it was just on these dates and it's likely -- Mr. Smith said likely that nobody saw it. The Court, by Fourth Circuit law, cannot make that assumption.

So in order to sort of pivot from the implications of *Thorn*, Plaintiffs rely on what happened in *Edmondson*, the Fourth Circuit opinion earlier in this case. But we need to be clear about what *Edmondson* actually concluded in a procedural context in which that went up to the Fourth Circuit. It was a Motion to Dismiss and the Fourth Circuit was bound to accept as true the allegations in the complaint which the Fourth Circuit makes clear multiple times. The case has nothing to do with class certification. True to form, the word "certification" doesn't appear anywhere in the opinion. *Edmondson* merely concluded that at the pleading stage where the allegations in the complaint said Plaintiffs did not know of their claims until they were alerted by a letter from their lawyer, there was nothing in the record that Edmondson was on inquiry notice. So it could not say as a matter of law on that record that Plaintiffs failed to discover their claim. That was only a determination as to name the Plaintiffs there, Mary Edmondson for us, and of course didn't have any effect on

the class certification.

Edmondson also states generally whether Plaintiff exercised due diligence in the face of public information about a claim is a jury issue, a question of fact. And the implication of that is that these types of individualized fact determinations prevent class certification.

Plaintiffs also rely on *Fangman* and *Palombaro*, two prior class certification cases that were decided in the *Fangman* round of cases. But they're distinguished from this case and offer no support. The Court there was never faced with arguments against certification based on the widespread notice of the claims available to the class for years before the case was filed. That's because that ultimately led -- it was those lines of cases that ultimately led to the publicity and notice issues that preclude certification here. They were also decided before the Fourth Circuit *Baehr* decisions, the individualized issues resulting from that case. So the record is very different from what those Courts decided such that there is recently no connection between the two.

Plaintiffs also seek to avoid denials of the motion on this idea that the Court should create a hypothetical reasonable mortgage borrower and then adjudicate whether that fictional borrower would have been on notice of the claims in light of the publicity surrounding the case and the enforcement actions.

First, that position ignores that *Thorn* rejected that specific reasonable person scenario specifically in the context of the situation where what counts is what the class members knew and when they knew it. The Court clarified that Defendants' argument, like here, is not that widespread treatment of the issue provided a reasonable person with sufficient information, instead what we're arguing is that the actual class members were exposed to sufficient information to give them actual or constructive notice. So *Thorn* says you can't in that situation create this reasonable person, you have to actually find out what the Plaintiffs knew.

The Plaintiffs' position also ignores the fact that according to them there's more than 3,000 plaintiffs who could have seen this information out there about their own loan brokers who were involved in enforcement proceedings that would have put them on actual or inquiry notice that they had a claim. It also ignores the Fourth Circuit law from *GO Computer* that says what's reasonable for each borrower depends on which information was at hand for that particular borrower. Each of these points goes to individualized inquiries. And Edmondson is not to the contrary. Edmondson's passing reference to a reasonable residential mortgage borrower even mentions that this is a question of fact and the Court did not have the benefit of the full evidentiary record this Court has related to the publicity and briefing as to how that issue

pertains to class certification since it was on a Motion to Dismiss. A reasonable residential mortgage borrower may make sense when all of the plaintiffs are similarly situated such that the answer to the notice question is capable of class-wide determination. That is the case in *Edmondson* where all of the main plaintiffs in the consolidated cases all said the same thing. Because it was a Motion to Dismiss, the Courts have to take the allegations as true and they all said that none of them were aware of the fact that they had a claim until they got a letter from the lawyer. In an instance like that, the inquiry shifts to whether that position is reasonable in light of the information at hand and whether it was reasonable for them not to be on notice.

But here the situation is different. You have 3,000 plus plaintiffs, assuming Plaintiffs' numbers are right, and they are not similarly situated. There's no dispute that there was publicly available evidence out there for more than 18 months before this case was filed. But now we have no idea what each plaintiff saw or when they saw it. And the only way to know that is to ask them each individually. And that's why *Thorn* controls, because it evaluated this precise issue in the context of a class certification on a class certification record and not on a Motion to Dismiss record where the Court had no choice but to assume what the pleadings said. And *Thorn* expressly rejects that.

The fact that individualized inquiries predominate over common ones is also apparent from Plaintiffs' own prior arguments to the Fourth Circuit, as well as the arguments made in their reply on this motion. Plaintiffs previously told the Fourth Circuit at oral argument that if you want to determine what the Plaintiffs knew or should have known, you have to ask them to find out. Ask them if they read the Baltimore Sun specifically. That's a direct quote. That's as plain as an admission that there is. And you can hear, we gave you the link to the transcript, Your Honor. You can hear them say it. This is directly an admission as there is that individualized inquiries into the statute of limitation issues would overwhelm the Commonwealth.

Plaintiffs also repeatedly in their presentation today talks about, it's a jury question, it's a jury question. If they said it once, they said it ten times, Your Honor. But in that game, the Court's decision in *Minter* is very helpful here. *Minter* was another RESPA case dealing with the statute of limitations concerning class certification. And there after originally certifying a timely class and a tolling class, the Court decertified the tolling class because of manageability concerns around the statute of limitations defense. And the Court there said, quote, "the problem is not that the circumstances of class members' transactions may create a jury question, it is that it only creates that jury

question as to some class members and not others. Managing a class action where some class members had a duty to inquire while others do not, presents substantial logistical and mental challenges for the Court and juries which warrant decertification in its already complicated case." That is a precise rejection of Plaintiffs' exact arguments here and the Defendants should just take the issue to the jury.

Finally, Your Honor, these individual issues created by the statute of limitations in *Baehr* are not even the only ones that are problematic here. Individual issues predominate also on whether the issue of these loans are even federally related. RESPA has a number of enumerated exemptions that would take the loan outside of this coverage. Things like extensions of credit for business or commercial or agricultural purposes. Example of that how this plays out, Chemene Clark did a cashout refinance where she took money from the transaction at issue. In those circumstances the only way to determine if the loans are actually federally related and subject to RESPA is to know what the funds were actually used for. Defendants do not track how those proceeds are used. And contrary to Plaintiffs' suggestion, the answer is not going to be apparent from the HUD-1 or the loan application unless the borrower knows how the money is spent.

The notion that Genuine Title's loan database can be relied upon to provide accurate answers is incorrect.

Defendants know from their own review of the data that Genuine Title, that much of it is not accurate and it has loans on there that never actually closed. And Plaintiffs are well aware of this because they faced this issue repeatedly in other situations, the problems with the database. So we can't just -- so relying on Genuine Title's database is not an adequate answer here, nor is the notion that there would be a claims process which violates the Defendants' due process rights because we have no way to challenge the voracity of the claim.

Either way you approach this, Your Honor, whether it's as a standing issue or as an individual issue predominating problem, the Class cannot be certified. Now I will stop there, Your Honor, and see what questions you may have.

THE COURT: Okay. Well, I do have a series of them. First, when you referred to the *Thorn* case and kept relying on the *Thorn* case and what should govern here, the facts of that case are so different than what we're dealing with here. The identified class had $1.4 million people over multiple states and a time period of over 60 years. Here we're dealing with just a much narrower situation. We're talking about media reports about some lawsuits and enforcement actions. So you'd acknowledge at least that there are some significant differences there?

MR. BECKER: I think there are differences in the numbers, but I think the principle in *Thorn* remains the same. The principle is still what Plaintiffs knew and when they knew it. And that's what has to be discerned here in order to certify a class. And I don't think the numbers make that any different. There is information in the record that anyone could have seen and that raises a question as to who saw it, when they saw it, and what the impact is on this very statute of limitations and whether they can be a member of the class. And that can only be discerned through an individualized inquiry.

THE COURT: Okay. I don't think there was much discussion of numerosity today, although you were just referring to the database to some extent. Does your side concede that numerosity is not in question here?

MR. BECKER: Yes, Your Honor.

THE COURT: When you're talking about notice, would there ever be a situation where there would not be a need for individualized inquiry in class action? I mean, you know, would equitable tolling in those types of cases, in your view there would always be a need for individualized inquiry, correct? And then in your view would we never be able to certify a class?

MR. BECKER: No, Your Honor. I don't think that's right. I think you look at *Fangman* and *Palombaro* and that

shows you where you can certify a class. I mean, at that time the notice issues were not widespread. They weren't widely reported. The issue was only in the sense of it coming up through court filings. And I think the Court was concerned well, most normal people don't have access to court filings so it's not an issue there. But I think this is a very different case. There are a lot of public press announcements and press releases and media coverage laying out exactly what happened. So that makes it a different situation.

THE COURT: And you acknowledge though that most of that media coverage did not focus on Eagle?

MR. BECKER: Yes, but what it focused on was Genuine Title which was involved in all of these transactions, but more importantly it focused on the individual brokers that were working with these proposed class representatives, actually working with them on a daily basis to get their loan closed, in Edmondson's case more than once, multiple loans that she worked with Mr. Mandelberg on. So you're talking about the actual individuals that these people were working with, press saying these individuals have been involved potentially in mortgage fraud. So I think that's an important difference.

THE COURT: So in your view it turns on the likelihood that class members would have had notice?

MR. BECKER: No, I think it turns on the idea if the

notice is available, we've got to find out what class members knew and when and the only way you can do that is through individualized --

(Court reporter was disconnected from the call at 11:42 a.m. and reconnected to the call at 11:44:32 a.m.)

MR. SMITH: --and it's whether the common issues predominate regarding the main event or main element or strongest element who were the individualized. The idea, again, 87 percent of the folks are outside the state of Maryland. The idea that somebody from Arizona would sign up to receive press releases from Brian Frosh here in Maryland I think is beyond unlikely.

With respect to the other aspects of the stuff, I mean again, Mortgage Daily, Credit Union Times, I mean the most, the most identifiable that regular residential borrowers would see would be the Sun paper or the Washington Post. I think they had something in there from China or something. And that's just a LexisNexis newswire search. And so, you know, most of these things don't matter whatsoever. And the only one -- none of the citations that any of the media coverage include Eagle. And only one that I'm aware of included -- only one of the Sun Papers I think it was, included the name Mandelberg and Klopp buried in it. And it was not even an article as I recall. I think it was a blurb

on page 12a.

So, you know, I think the Court of Appeals in *Edmondson* identified the reasonable residential mortgage borrowers standard as the standard by which we judge diligence. And that can be done on a common because the defendant can put forward to the extent the Court allows, what was out there. And again, this is five years after the latest of the people that they would have had them check on the news for five years straight, every single day. And it came out not on a Sunday, not in the Sunday paper, it came out on a Friday and a Thursday with respect to these. And the bulk of that was relative to Wells Fargo and Chase and not individual brokers. So that's what I have on the diligence issue.

With respect to the federally related just briefly, Your Honor, yes we've had probably somewhere between 40 and 50,000 borrowers that we've had to deal with in the settlement --

THE COURT: Counsel, I'm sorry to interrupt. Apparently our court reporter got disconnected.

THE COURT REPORTER: I'm back on. I'm back on, Judge. I got back on. You may continue. I did miss a little bit. It cut me off. I got right back on and called, but it took me a few minutes to get through.

THE COURT: Counsel, I'll defer to you, if you want to back up a little bit, if you can recall what you said

roughly or whether you want to --

MR. SMITH: I don't remember where I was. The idea that somebody five years after their settlement would be combing the papers looking for bad acts by their lender and never seeing their lender's name, and this idea, you know, Adam Mandelberg managed a branch. Gary Klopp managed the branch. The idea that the primary contact on a day in and day out basis -- and Gary Klopp I know was a very large branch. The idea that the personal conduct between the borrower and the bank was the branch manager in each case I think belies what the reality is. And only one of the what I would call community-related residential borrower publications that it would have appeared on -- and again, the jury is going to decide whether the diligence requires them to be doing searches for this. So you're only talking about somebody consuming it in the ordinary course of business of reading from page 1 through page whatever that the Sun Paper has. And remember, the Sun Paper's subscription is only 2 percent of Marylanders and we have 87 percent of the people outside the state of Maryland. You know, I think it certainly doesn't predominate the common issues.

Moving onto the federally related, you know, what really happens in these issues, we can identify any ones that are questioned. In fact, I've had to do it with Mr. Moffet. He sends me six to eight loans out of it and we look at the

loan applications are there's maybe one or two of the people we have to follow-up with. So this idea that there's the exceptions for federally-related that are the Defendants' burden are going to overwhelm the common issues I think belies what the reality is.

And then just briefly on the overcharge, *Edmondson* makes clear it specifically criticizes the failure of the Defendants to itemize on the HUD-1 the referral fee. If they had done what *Edmondson* said, Your Honor, we would specifically be pointing to line 1110 of the HUD-1 where it says referral fee $300. And we'd say Judge, that is exactly what Ms. Edmondson was overcharged. And it was paid on September the 2nd, 2010. Because they don't do what *Edmondson* says they have to do and victimize it on there and using Mr. Maloney's term, baked into the title exam and not individually itemize, that they want to say well now it's not -- we've got to get into this comparison and it creates an individualized issue. We know that $300 for each settlement, a minimum of $300 for each settlement is being paid for the referral by Adam Mandelberg. We know that from Jay Zukerberg. And so therefore -- and we know from their actions from Mr. Yerman that that as a volume discount, is typically passed on to the borrower. And in this case it didn't go -- it went to the branch manager at Eagle.

So with respect to that, with respect to just

briefly with respect to the bankruptcy, we filed the motion to reopen. The council had conversations with the trustee's office. There was only a little bit of difference between what Ms. Clark really could get, not the $5,000 that they offered, what she really could get and what was already exempt. They had given preliminary indications that they were going to abandon the billing because little amount between the two. And it wasn't until the defendants offered $5,000 which is more than -- because Mr. Clark is only entitled to half the claim. That's more than what she would be entitled to under the statute that the Bankruptcy Court -- bankruptcy trustee changed its mind. But, you know, that's neither here nor there. Ms. Edmondson has standing. And we know that had the broker instead of taking or the broker or the branch manager, had the broker or branch manager taken the discount or the money and let it go to the borrower, we know from Mr. Zukerberg himself he would have been happy to give it to the borrower instead of the branch manager, but that's just not the way these branch managers were doing business back then. And it was setting the market and it was doing exactly what Congress sought to protect. It was unnecessarily increasing the cost of settlement charges.

So unless Your Honor has additional questions.

THE COURT: No, thank you. That was helpful. Well I appreciate everyone's presentations today. I am not going

to make a ruling right now. I will issue a written ruling as soon as possible, but I appreciate all of your patience with this format that is forced upon us and your participation today. Is there anything else from either side that we need to address?

MR. SMITH: Not from the Plaintiffs.

MR. BECKER: Not from Defendants, thank you.

THE COURT: Thank you all. Stay safe.

(Proceeding concluded at 11:53 a.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Nadine M. Gazic, Certified Realtime Reorter and Registered Merit Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 26th day of October, 2020.

Nadine M. Gazic

NADINE M. GAZIC, CRR, RMR

FEDERAL OFFICIAL COURT REPORTER

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